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Vignola v. JDM Wash. St. LLC

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[*1]

Vignola v JDM Wash. St. LLC
2022 NY Slip Op 50232(U)
Decided on March 29, 2022
Supreme Court, New York County
Kraus, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on March 29, 2022

Supreme Court, New York County

Chad Vignola, Plaintiff,

against

JDM Washington Street LLC, Defendant.

Index No. 152025/2020

Sabrina B. Kraus, J.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 36, 37, 38, 39, 40, 41, 42, 43, 50 were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 44, 45, 46, 47, 48, 49 were read on this motion to/for AMEND CAPTION/PLEADINGS.

BACKGROUND

JDM Washington Street LLC is the owner in fee of the apartment building located at 90 Washington Street (the "Building") in Manhattan. Until June 2016, the Building received certain tax abatements and/or exemptions pursuant to the 421-g tax benefits program, and as

such was required to provide its tenants with rent-stabilized leases as a condition of receiving the tax benefits. Plaintiff alleges that defendant failed to do that and has forced tenants in the building to switch apartments in attempt to avoid compliance with the applicable rent regulatory scheme.

PENDING MOTIONS

On October 29, 2021, plaintiff moved by order to show cause for an order:

(a) pursuant to, inter alia, CPLR 6301, et seq., enjoining defendant from taking further steps to terminate the tenancies of Louiza Chirinian and Chris Kanarick at the Building; and

(b) pursuant to, inter alia, CPLR 6301, et seq., enjoining defendant from taking further steps to terminate the tenancies of any other class members' until such time as class members are provided with a Court-approved notice of this action, and advised to seek legal counsel; and

(c) pursuant to, inter alia, CPLR 904 directing defendant to provide a current rent roll for the Building, so that the Court-approved notice of this action can be distributed.

On January 5, 2022, plaintiff moved for leave to amend their complaint.

Both motions have been fully briefed and are consolidated herein for determination. For [*2]the reasons set forth below, both motions are granted.

ALLEGED FACTS

On or about January 1, 2010, plaintiff leased Apartment 7A in the Building. Plaintiff did not receive a rent stabilized lease at the time he moved into his apartment and was provided with non-rent stabilized lease renewals. Plaintiff's apartment was not registered with DHCR, and was, in fact, listed as exempt from rent stabilization.

Plaintiff did not receive any of the riders required by the 421-g Program for his unit. Additionally, plaintiff submits the affidavit of Louiza Chirinian (LC) another tenant at the building. LC is also a tenant at the Building. LC first moved into Apartment 8N at the Building in October 2016. On November 1, 2017, LC renewed her lease for Apartment 8N for one year. On November 1, 2018, LC renewed her lease for an additional year. When that lease expired, defendant insisted that LC either transfer the apartment, or vacate my unit.

Defendant did not inform LC that Apartment 8N was rent stabilized at the time they forced her to transfer or vacate. LC transferred to Apartment 18D. Defendant provided LC with a lease renewal for Apartment 18D. On or about September 3, 2021, LC signed a lease renewal for Apartment 18D. After LC provided that renewal to defendant, LC received an email rejecting the submitted renewal and demanding that LC must vacate by 10/31/2021. Defendant subsequently issued LC a predicate notice for a summary eviction proceeding. LC does not wish to vacate her apartment.

Plaintiff also submitted an affidavit from Chris Kanarik (CK). CK first occupied Apartment 17C at the Building in November 2015. CK subsequently renewed his lease through October 2018, when he signed a one-year lease. When that lease expired, defendant insisted that CK either transfer to a different apartment or vacate his unit. Defendant did not inform him that Apartment 17C was rent stabilized at the time they forced him to transfer or vacate. CK transferred to Apartment 24H. On August 25, 2021, CK was advised that defendant intended to offer him a lease renewal, and that that lease renewal would be provided in seven days. On August 31, 2021, CK received an email advising that defendant would not be renewing his lease and demanding that CK vacate his apartment. CK subsequently received a lease renewal, increasing his rent by 29%. That renewal specifically advised that CK's apartment was not subject to rent regulation. CK does not wish to vacate his apartment.

Colleen Tripp (CT) is a tenant in Apartment PHD at 90 Washington Street, pursuant to a lease that expired in February 2020. Defendant advised CT that in order to remain in the Building after her lease expiration, she needed to switch apartments with Benjamin Davis (BD), the tenant of record of Apartment PHA. CT subsequently signed a lease for Apartment PHA, and believes BD signed a lease for Apartment PHD. The transfers were to be effectuated in March 2020, but defendant cancelled them due to COVID-19. They have never been rescheduled. Since that time, CT has repeatedly asked defendant how much she should pay in rent but received no response. CT paid the rent amount for PHA, which until recently defendant accepted without protest. Defendant has commenced summary eviction proceeding against CT under Index Number LT 301675/2022. CT seeks permission to be named as a plaintiff in this action.

DISCUSSION

Plaintiffs' Motion to Amend the Complaint Is Granted

Pursuant to CPLR 3025(b), "[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties." Leave to amend pleadings is generally freely granted (*RBP of [*3]400 W42 St., Inc. v 400 W. 42nd St. Realty Assoc.*, 27 AD3d 250, 250 [1st Dept 2006]), although the court retains the sound discretion over whether to permit the amendment (*see Pellegrino v New York City Tr. Auth.*, 177 AD2d 554, 557 [2d Dept 1991]). On a motion to amend a complaint the court will examine the underlying merits of the proposed causes of action (*Eighth Ave. Garage Corp. v H.K.L. Realty Corp.*, 60 AD3d 404, 405 [1st Dept 2009]), and the plaintiff must establish "that the proffered amendment is not palpably insufficient or clearly devoid of merit" (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]).

Plaintiff alleges that after the Court of Appeals issued its decision in *Kuzmich v 50 Murray Street* (34 NY3d 84 [2019]) holding that tenants in buildings participating in the 421-g Program are entitled to the benefits of rent stabilization, defendant required its tenants to switch apartments in an attempt to deprive them of their rights under Rent Stabilization. Plaintiff further alleges that at the time he filed his complaint he was unaware of the defendant's widespread use of forced transfers to deprive tenants of their rights.

Once plaintiff's counsel distributed the notice to the Building's tenants who received non-renewal notices, advising them of this action, they were contacted by a number of tenants in the Building, both those who had received the notice, and additional tenants. Those tenants confirmed that defendant had required many of them to transfer apartments within the Building, and many of them expressed a desire to join this action as representative plaintiffs. Accordingly, plaintiff seeks leave to file an amended complaint, which adds allegations with respect to the unit transfers, and adds additional plaintiffs.

While defendant opposes the motion, defendant points to no prejudice it will suffer as a result of the amendment. Defendant alleges procedurally improprieties and a lack of standing. Defendant alleges each of these defendants should be required to make an individual motion to intervene pursuant to CPLR §1013.

Intervention is not necessary to add parties to an action, and a motion to amend is a permitted procedural vehicle to do so. (*Heritage Co. of Massena v La Valle*, 199 AD2d 1036 [4th Dept 1993]; *Agri Fin. Inc v Senter*, 105 AD2d 560 [3d Dept 1984]).

Moreover, under New York law class actions are deemed to be class actions from the

outset, rather than after certification. (*Desroises v Perry Ellis Menswear*, 30 NY3d 488, 494 [2017]. Since the proposed additional Plaintiffs are already before the Court as class members, there is no requirement for them to file individual motions to intervene.

Defendant's argument that motion is defective because it is not supported by affidavits relying on *Arriaga v Michael Laub Co*. (233 AD2d 244 [1st Dept 1996), is misplaced. Affidavits are no longer required, as held by the Appellate Division in *Boliak v Reilly*, 161 AD3d 625, 625 [1st Dept 2018] "Plaintiffs were not required to submit an affidavit of merit or make any other evidentiary showing in support of their motion [for leave to amend]."

Based on the foregoing the motion to amend the complaint is granted.

Plaintiffs' Motion for An Injunction Is Granted

On February 25, 2020, plaintiff filed this putative class action on behalf of himself and all others similarly situated current and former residents at 90 Washington Street. As demonstrated by the affidavits of LC and CK, defendant is taking steps to terminate their tenancies, and it is reasonable to assume the tenancies of other similarly situated tenants.

To obtain a preliminary injunction, plaintiffs must establish (1) a likelihood of success on the merits, (2) the equities favor the movant, and (3) irreparable harm if such injunction were not granted. (CPLR 6301, et seq.; *see also Barbes Rest. Inc. v ASRR Suzer 218, LLC*, 140 AD3d 430 [*4][1st Dept 2016].

Plaintiff has met its burden in showing a likelihood of success on the merits (*Demartini v Chatham Green* 169 AD2d 689), given defendant's participation in the 421-g program, its is likely that the class members' respective apartments are subject to rent stabilization, indeed this point is not really contested by defendants who again rely primarily on alleged procedural defects in seeking to oppose the motion. The equities favor the movant given the sworn statements of defendant's actions in forcing tenants to switch apartments to deprive them of their rights under rent stabilization, and plaintiff shows a potential for irreparable harm, as an award of damages will not adequately compensate the tenants for losing their homes and their right to protection under rent stabilization for the duration of their tenancies. *Pilgreen v 91 Fifth Ave. Corp*., 91 AD2d 565 [1st Dept 1982]); *Jiggetts v Perales*, 202 AD2d 341 [1st Dept 1994]

CPLR §904(b) provides in pertinent part that " . reasonable notice of the commencement of a class action shall be given to the class in such manner as the court

directs." As noted above, the Court of Appeals has held "class action," as utilized in CPLR Article 9, includes any case filed as a class action, regardless of whether certification has taken place. *Desrosiers v Perry Ellis Menswear, LLC*, 30 NY3d 488, 492 [2017]. Pursuant to CPLR §904 and §907, this court is empowered to act to protect the class and ensure that notice of this action is provided. While it is typical to wait until after certification to provide the class notice, CPLR §904(b) does not actually require that certification precede notice.

Here, given defendant's attempts to drive tenants from the Building, it is just, proper, equitable, and fundamentally necessary for their protection, that tenants be advised of this action's existence, their potential for rent-stabilized leases at reduced rates, and their right to contact counsel, to the extent that this has not already taken place.

The opposition submitted by defendant does not warrant a different conclusion. Defendant argues that the failure to attach the complaint to the application is a "critical defect" because they don't know the conduct that plaintiff is seeking to enjoin and there are no factual allegations to support an injunction. This argument lacks merit. The summons and complaint were filed well in advance of the motion and were available on NYSCEF for the court and defendant at all times, and in any event the complaint is amended pursuant to this order. Additionally, a reading of the motion papers, including the affidavits submitted by the tenants, establishes clear factual allegations supporting the relief, and the nature of the conduct sought to be enjoined.

Finally, defendant's reliance on *Cox v JD realty Associates* (217 AD2d 179) for the proposition that it would be inappropriate for this court to enjoin a potential future termination of tenancy and eviction proceeding is misplaced. In that action the landlord essentially tried to bring a nonprimary residence holdover proceeding as a declaratory action in Supreme Court. In the case at bar the plaintiff seeks relief unavailable in Housing Court including injunctive and declaratory relief (*see eg North Waterside Redevelopment Company, LP* 256 AD2d 261).

CONCLUSION

ORDERED that the plaintiff's motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that the action shall bear the following caption:

CHAD VIGNOLA, LOUIZA CHIRINIAN, BENJAMIN DAVIS, COLLEEN TRIPP, VINEET DUTTA, and CHRISTOPHER KANARICK on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

JDM WASHINGTON STREET LLC

Defendant.

And it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the parties being added pursuant hereto; and it is further

ORDERED that pursuant to CPLR 6301, et seq., JDM Washington Street, LLC and/or its affiliates, agents, attorneys, employees and anyone acting on their behalf, or under their control, are enjoined from taking further steps to terminate or to threaten to terminate the tenancies of Louiza Chirinian, Chris Kanarick, Benjamin Davis, Colleen Tripp and Vineet Dutta at 90 Washington Street; and it is further

ORDERED that pursuant to CPLR 6301, et seq., JDM Washington Street, LLC and/or its affiliates, agents, attorneys, employees, and anyone acting on their behalf, or under their control, are enjoined from taking further steps to terminate or to threaten to terminate the tenancies of any other class members' units, minimally until such time as class members are provided with a Court-approved notice of this action, and advised to seek legal counsel; and it is further

ORDERED that pursuant to CPLR §904 JDM Washington Street LLC is directed to provide plaintiffs with a current rent roll for the Building, so that the Court-approved notice

of this action can be distributed [FN1] ; and it is further

ORDERED that counsel are directed to appear for a virtual status conference in Room on June 3, 2022 at 12 PM.

Dated: March 29, 2022
Sabrina Kraus, J.S.C.

Footnotes

Footnote 1: It appears from the motion papers that this may have already occurred, but it is not clear.

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